

REMARKS/ARGUMENTS

Claims 1-20 remain pending in this application. Claims 1, 6, 8, 10, 11, 12, 15 and 16 have been amended. Support for these amendments can be found throughout the specification and the claims as originally submitted, and specifically in paragraphs 0025, 0026, 0029, 0030 0035, 0036

Although the Examiner has indicated in the Office Action Summary that claims 1-20 are rejected, Applicant is unable to identify a rejection for claim 7.

Claims 6, 8, 10, 15-16 have been amended to remove the parenthesis in view of the Examiner's 112 rejection. Removal of the rejection is respectfully requested.

The Examiner has rejected claims 1-5 and 12-14 under 35 U.S.C. 102 over JP 60141693, JP 52068715, Cox et al. (Oct. 1998) and Exacto (Dec. 2000), Schapira et al. (US Patent 5,472,476), and Rose et al. (US Patent 6,288, 010). Claims 1-6 and 8-20 were rejected under 35 U.S.C. 102 over Brigance et al. (US Patent 6,423,109).

The present invention is directed to a combination adjuvant comprising dry fertilizer granules impregnated with a drift reducing agent. In order to impregnate the dry fertilizer granules (preferably ammonium sulfate) with the drift reducing agent (preferably ammonium sulfate), the drift reducing agent is provided as a liquid. A generally uniform amount of drift reducing agent is applied to each granule.

Several of the references cited by the Examiner simply disclose a combination of ammonium sulfate and polyacrylamide. However, the present claims do not cover any combination of a fertilizer and a drift reducing agent, or of ammonium sulfate and polyacrylamide, only the combination of fertilizer granules impregnated with a drift reducing agent. The resulting adjuvant is a dry, free flowing composition, as specified in claim 1. A

combination of this kind, with no additional powdered drift reducing agent, is not disclosed in any of the prior art references. The combination of the present invention has improved properties resulting from the manner in which the dry fertilizer and liquid drift reducing agent are combined and the characteristics of the resulting product.

With respect to the JP 60141693, JP 52068715, and Rose et al. references, none of these references disclose a dry and free flowing adjuvant, as required by claim 1 or providing dry ammonium sulfate granules and a liquid drift reducing agent, as required by claim 12. The JP 60141693 reference discloses an *aqueous fertilizer* solution absorbed in a water-absorptive gel. The JP 52068715 reference discloses a *powdered* polymer, *does not* disclose a granular fertilizer and in no way discloses impregnating the fertilizer with the polymer. The Rose reference discloses a *solution* comprising a fertilizer and anti-drift agent. Importantly, none of the reference disclose a dry mixture comprising a granular fertilizer or a granular fertilizer impregnated with an anti-drift agent. Thus, these reference cannot anticipate claims 1-4 or 12-14.

Nor do these references in any way suggest the claimed combination of a granular fertilizer impregnated with an anti-drift agent to form a dry free flowing adjuvant, or the process for combining a dry granular fertilizer with a liquid anti-drift agent. As such, claims 1-4 and 12-14 are not obvious over these references.

The Examiner further rejected claims 1-5 and 12-14 under 35 U.S.C. 102(b) over Cox et al. and Exacto. The Exacto reference was published in December, 2000, within one year of the filing date of the present application, such that it is not 102(b) prior art. The Cox et al. reference is not a printed publication. Rather, the document submitted is a print out of the slides presented at a speech. To the best of Applicant's knowledge, no copies of the slides were handed out at the

meeting or otherwise published publicly. A speech is not considered a printed publication where copies of the speech are not made generally available. See Hybritech, Inc. v. Abbott labs., 4 USPQ2d 1001(C.D. Cal. 1987), aff'd 849 F.2d 1446, 7 USPQ2d 1191 (Fed. Cir. 1988). As such, the slides submitted are not a printed publication under section 102(b) and are not prior art.

The Examiner has also rejected claims 1-5 and 12-14 as being anticipated by Schapira et al. Applicant submits that the Schapira et al. does not anticipate the present claims. Schapira et al. is directed to a composition to be applied to a fertilizer to prevent clumping of the fertilizer. The present invention is directed to the product of applying a liquid anti-drift agent to fertilizer granules. Anti-drift agents, such as polyacrylamide tend to increase clumping.

Schapira et al. disclose a genus of polymers, although all of the examples use PVA. Certain anti-drift polymers covered by the present claims fall within the genus disclosed by Schapira et al. However, a species claim is not anticipated by the disclosure of a genus containing the species unless there is some suggestion or motivation to select the claimed species from the genus. See Corning Glass Works v. Sumitomo Electric U.S.A. Inc., 9 U.S.P.Q. 2d 1962, 1970 (Fed. Cir. 1989). In the present case, there simply would have been no motivation for one skilled in the art to select the claimed anti-drift polymers, such as polyacrylamide, from the genus disclosed by Schapira et al. for use as vehicles for anti-clumping agents, particularly in view of the use of PVA in all of the examples.

In fact, one of ordinary skill in the art would have been directed away from selecting anti-drift polymers such as polyacrylamide, in that such compounds would add to the clumping problem addressed by Schapira et al., rather than improve it. Thus, because there would have been no motivation to select polyacrylamide or other anti-drift polymers from the genus disclosed, claims 1 and 12, and the claims which depend therefrom, are not anticipated or

obvious over Schapira et al.. In addition, claims 2, 12 and the claims that depend therefrom are not anticipated by Schapira et al., insofar as Schapira et al. do not disclose the claimed ammonium sulfate as the fertilizer.

With respect to the remaining Brigance reference, Applicant submits that Brigance et al. disclose a composition comprising a powdered fertilizer, a polyacrylamide liquid emulsion/dispersion and a polyacrylamide powder. Applicant's claims specifically exclude the presence of an anti-drift powder in the composition. As such, Applicant's claims are not anticipated by Brigance et al.

Nor is Applicant's claimed invention obvious over the Brigance et al. reference. The absence of a powdered polymer component in Applicant's composition is not simply a matter of design choice. The presence of a powdered polymer in a dry adjuvant can cause difficulties in uniformly dissolving the composition, often causing nozzle or filter clogging during application of the composition. However, increasing the amount of liquid polymer leads to clumping problems, as discussed above. Brigance et al. recognized the difficulties of using a liquid polyacrylamide (col. 5, lines 30-42) and determined that using a combination of liquid polyacrylamide and finely ground polyacrylamide solved the problem (col. 5, line 66 to col. 6, line 11). Thus, Brigance et al. teach away from the claimed invention which uses only liquid and no powdered polyacrylamide.

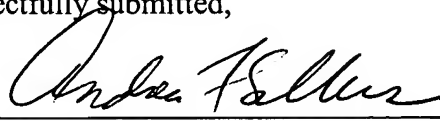
In fact, Applicant found that it was very difficult to produce a composition that had incorporated a sufficient amount of drift reducing agent without employing a powder. Rather than being a simple design choice, it required a great deal of trial and error to develop a composition having suitable characteristics with only liquid polymer. Thus, the claimed invention would not have been obvious over the Brigance et al. reference.

In view of the foregoing amendments and remarks, it is respectfully submitted that the claims are now in condition for allowance and eventual issuance. Such action is respectfully requested. Should the Examiner have any further questions or comments which need be addressed in order to obtain allowance, he is invited to contact the undersigned attorney at the number listed below.

Acknowledgement of receipt is respectfully requested.

Respectfully submitted,

By:



Andrea F. Sellers, Reg. No. 44,102
STINSON MORRISON HECKER LLP
1201 Walnut, Suite 2800
Kansas City, MO 64106-2150
Telephone: (816) 842-8600
Facsimile: (816) 691-3495
Attorney for Applicant